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MAILED  
MAY 23 2011  
OFFICE OF PETITIONS

In re Patent No. 7,868,036 : DECISION ON  
Herold, et al. : PATENT TERM ADJUSTMENT  
Issue Date: January 11, 2011 : AND NOTICE OF INTENT  
Application No. 10/593,461 : TO ISSUE  
Filed: September 19, 2006 : CERTIFICATE OF  
Attorney Docket No. 2006\_1381A : CORRECTION

This is a decision on the "PETITION REGARDING PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)", filed December 3, 2010. Patentees request that the patent term adjustment indicated on the patent be corrected to ninety-eight (98) days.

The request is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one hundred sixty-nine (169)** days.

On September 14, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above

identified application. The Notice stated that the patent term adjustment (PTA) to date was two hundred forty-seven (247) days. On December 3, 2010, Applicants timely<sup>1</sup> submitted the instant application for patent term adjustment. Applicants state that the patent term adjustment should have been calculated as ninety-eight (98) days. The application issued as Patent No. 7,868,036 with a patent term adjustment of two hundred fifty (250) days.

The Office initially determined a patent term adjustment of two hundred fifty (250) days based on an adjustment of two hundred fifty (250) days of PTO delay pursuant to 35 U.S.C.

154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), eighty-seven (87) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. 1.703(a)(2), and seventy-one (71) days pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.703(b), reduced by sixty-two (62) and thirty-one (31) days pursuant to 37 CFR 1.704(b), and sixty-eight (68) days pursuant to 37 CFR 1.704(c)(8).

Applicants point out that the eighty-seven (87) days of PTO delay accorded to the Office was incorrect. The Office mailed a final Office action on June 29, 2009. This Office action was mailed in reply to an Amendment filed on May 4, 2009, not December 3, 2008 as reflected in PALM. Accordingly, the final Office action was timely mailed within four months, and as such, no days of PTO delay should have been accorded. Furthermore, as the Amendment was filed on May 4, 2009, sixty-two (62) days of Applicant delay should have been accorded, because it was filed in response to an Office action mailed on December 3, 2008.

Lastly, a review of the file reveals that Applicants were assessed sixty-eight (68) days under 37 CFR 1.704(c)(10) for allegedly filing a "Refund Request" on November 5, 2010. However, there is no such request present in the application file. Accordingly, the 68 days of Applicant delay were improperly assessed and have been removed.

In view thereof, the correct determination of PTA at the time of issuance is **one hundred sixty-nine (169)** days (324 (253+71) days of PTO delay, reduced by 155 (62+62+31) days of applicant day).

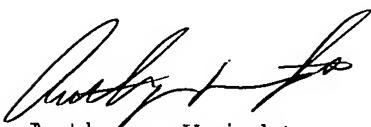
Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

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<sup>1</sup> Applicants filed the application for patent term adjustment together with the payment of the issue fee.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **one hundred sixty-nine (169)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Anthony Knight  
Director  
Office of Petitions

Enc: draft certificate of correction

**UNITED STATES PATENT AND TRADEMARK OFFICE  
CERTIFICATE OF CORRECTION**

**PATENT NO.:** 7,868,036

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**DATED:** January 11, 2011

**INVENTOR(S):** Herold et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 250 days.

Delete the phrase "by 250 days" and insert -- by 169 days --.